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9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**  
11

12 BAYKEEPER, INC., d/b/a SAN  
FRANCISCO BAYKEEPER, a  
13 California non-profit corporation,

14 Plaintiff,

15 v.

16 CITY OF SOUTH SAN FRANCISCO,  
a California municipal corporation,

17 Defendant.  
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Case No. 10-00921 SBA

**NOTICE OF MOTION AND JOINT  
MOTION FOR TERMINATION OF  
CONSENT DECREE**

Date: June 4, 2013  
Time: 1:00 p.m.  
Courtroom: 1

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that, pursuant to Federal Rules of Civil Procedure, Rule 60 and the terms of this Court's Consent Decree entered on May 16, 2011, on June 4, 2013, at 1:00 p.m., or as soon as thereafter as the matter may be heard in the above-entitled Court, located at 1301 Clay Street, 4th Floor, Courtroom 1, Oakland, California 94612, the Honorable Sandra Brown Armstrong presiding, Plaintiff Baykeeper, Inc., d/b/a San Francisco Baykeeper and Defendant City of South San Francisco will move, and hereby do move, the Court to terminate the Consent Decree in this matter and dismiss the case.

DATED: April 5, 2013

MEYERS, NAVE, RIBACK, SILVER &  
WILSON

By: /s/Gregory J. Newmark  
Gregory J. Newmark  
Attorneys for Defendant  
City of South San Francisco

DATED: April 5, 2013

SAN FRANCISCO BAYKEEPER

By: /s/Jason Flanders  
Jason Flanders, Staff Attorney

1 **I. INTRODUCTION AND BACKGROUND**

2 Plaintiff Baykeeper, Inc., d/b/a San Francisco Baykeeper (“Baykeeper”) and  
 3 Defendant City of South San Francisco (“City”) bring this Joint Motion For  
 4 Termination Of Consent Decree pursuant to Federal Rules of Civil Procedure, Rule  
 5 60 and the terms of this Court’s Consent Decree entered on May 16, 2012,  
 6 requesting that this Court enter an order terminating the Consent Decree, a copy of  
 7 which is attached hereto as Exhibit “A,” and dismissing the case.

8 On March 4, 2010, Baykeeper filed the complaint herein against the City,  
 9 alleging violations of the federal Clean Water Act by the City in connection with its  
 10 operation of the City’s sewage collection system. The Consent Decree is the result  
 11 of a settlement reached between the parties. Section VI of the Consent Decree  
 12 authorizes the parties to move the Court to terminate the Consent Decree if the City  
 13 has no more than 4 Sanitary Sewer Overflows (SSOs) per 100 miles of sewer from  
 14 the City Collection System in one calendar year, followed by no more than 3 spills  
 15 per 100 miles of sewer the following year. The City has met these criteria and  
 16 therefore this Motion should be granted, the Consent Decree terminated, and the  
 17 case dismissed.

18 **II. ARGUMENT**

19 On May 16, 2010, this Court entered the Consent Decree. The Consent  
 20 Decree has a 5-year term, but under Section VI, Paragraph 18, the Consent Decree  
 21 may terminate early if “the City has no more than four SSOs per 100 miles of sewer  
 22 from the City Collection System in a given calendar year followed by no more than  
 23 three SSOs per 100 miles of sewer in the succeeding calendar year.” See Ex. “A”  
 24 [Consent Decree] at ¶ 18. The Consent Decree provides that if the aforementioned  
 25 spill goals are met, then the City “shall initiate early termination by submitting a  
 26 letter to Baykeeper demonstrating that it has satisfied the conditions of early  
 27 termination set forth” in Paragraph 18. Ex. “A” [Consent Decree] at ¶ 18. The City  
 28 submitted a letter to Baykeeper on February 21, 2013, notifying Baykeeper that it

1 had met the SSO requirements for early termination under Paragraph 18 of the  
2 Consent Decree and submitting documentation demonstrating same. See Ex. “B”  
3 [City’s February 21, 2013 Early Termination Letter]. As the City’s letter shows, the  
4 City had 3 spills per 100 miles of pipe in Calendar Year 2011, followed by 3 spills  
5 per 100 miles of pipe in Calendar Year 2012 (*id.*), and, thus, the City met the  
6 Consent Decree’s requirements for early termination.

7 Baykeeper reviewed the City’s request and the parties hereby stipulate that  
8 the City has indeed achieved the spill goals allowing for early termination of the  
9 Consent Decree. See Ex. “C” [Baykeeper’s February 26, 2013 Response to City].  
10 The parties further stipulate that the judgment “has been satisfied, released, or  
11 discharged” and termination of the Consent Decree and dismissal of this case is  
12 proper. Fed. R. Civ. Proc., Rule 60(b); *SEC v. Randolph*, 736 F.2d 525, 528 (9th  
13 Cir. 1984).

14 Furthermore, this Court retained jurisdiction to enforce the terms and  
15 conditions of the Consent Decree. Consent Decree, ¶ 83. A proposed order, filed  
16 concurrently herewith, would dismiss this case, terminate the Court’s jurisdiction  
17 under the Consent Decree, and discharge the City of any and all present and future  
18 obligations arising thereunder.

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1 **III. CONCLUSION**

2 For the reasons set forth above, the parties jointly move this Court to enter the  
3 proposed order to terminate the Consent Decree and dismiss this case.

4  
5 DATED: April 5, 2013

MEYERS, NAVE, RIBACK, SILVER &  
WILSON

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7  
8 By: /s/Gregory J. Newmark

9 Gregory J. Newmark  
10 Attorneys for Defendant

11 City of South San Francisco

12 DATED: April 5, 2013

SAN FRANCISCO BAYKEEPER

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14 By: /s/Jason Flanders

15 Jason Flanders

16 Attorney for Plaintiff

17 San Francisco Baykeeper  
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**ORDER**

On April 5, 2013, Plaintiff Baykeeper, Inc. and Defendant City of South San Francisco jointly moved this Court for termination of the Consent Decree in *Baykeeper, Inc. v. City of South San Francisco*, Civ. No. 10-00921 SBA. The Court, having considered the papers, and good cause appearing, rules as follows:

Plaintiff's and Defendant's Joint Motion For Termination Of Consent Decree is hereby GRANTED and this case is DISMISSED. The Consent Decree in this matter, and the Court's continuing jurisdiction, are hereby TERMINATED.

The parties shall bear their own attorneys' fees and costs associated with this Motion.

IT IS SO ORDERED.

DATED: 4/16/13

  
UNITED STATES DISTRICT COURT JUDGE  
SAUNDRA BROWN ARMSTRONG